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Paper No. 7

LUMEN INTELLECTUAL PROPERTY SERVICES, INC.
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MAIL

FEB 26 2004

In re Application of : DIRECTOR OFFICE
Witold KULA : TECHNOLOGY CENTER 2600
Application No. 09/614,945 : DECISION ON PETITION TO
Filed: July 12, 2000 : WITHDRAW HOLDING OF
For: SPIN VALVE MAGNETIC PROPERTIES : ABANDONMENT
WITH OXYGEN-RICH NIO UNDERLAYER : :

This is a decision on the petition filed October 17, 2003, based on M.P.E.P. 711.03(c)(II), and pursuant to 37 C.F.R. § 1.181(a), to withdraw the holding of abandonment.

This application became abandoned for failure to timely respond to the non-Final Office action mailed March 18, 2002. A Notice of Abandonment was mailed on November 18, 2002.

Petitioner alleges that neither the non-Final Office action mailed March 18, 2002, nor the Notice of Abandonment mailed November 18, 2002, were received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the records finds that the non-Final Office action was properly mailed to the practitioner of record at the correspondence address at the time of mailing. It also finds that the Notice of Abandonment was properly mailed to another correspondence address which was the

correct address of record at that time. Thus, there was no irregularity in mailing the non-Final Office action or the Notice of Abandonment on the part of the U.S. Patent and Trademark Office.

The allegation of non-receipt is supported by statements from the petitioner attesting that the Office Action was not received by Lumen Intellectual Property Services at either of the prior correspondence addresses of record, and that a search of the contents of the file jacket and docket records reveal no evidence of receipt. Copies of the docket records have also been included to corroborate petitioner's claim.

The showing offered complies with the requirements of a successful petition to withdraw the holding of abandonment due to non-receipt of the non-Final Office action as set forth above. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Accordingly, the petition is **GRANTED**.

Applicant is reminded of their duty to timely notify the Office of any future changes in correspondence address.

Due to the time lapse from the previous Office action and this decision, the file is being forwarded to the examiner for updating the search and the Office action as appropriate. The time period for response will be set to run from the mailing date of the new action.



Mark Powell, Director
Technology Center 2600
Communications